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8                   **UNITED STATES DISTRICT COURT**  
9                   **CENTRAL DISTRICT OF CALIFORNIA**

10                   FRANCES K. OPELLE,

11                   CASE NO. SA CV 17-0961-DOC (KESx)

12                   Plaintiff,

13                   vs.

14                   DOUGLAS CRANE KNEUBUHL also  
15                   known as MIKE KNEUBUHL,

16                   **FINDINGS OF FACT AND**  
17                   **CONCLUSIONS OF LAW**

18                   Defendant.

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## I. INTRODUCTION

A bench trial on this matter was held on January 15–18, 2019.

3 This action arises out of a dispute regarding an approximately 240-acre parcel of  
4 land referred to as Fagaiofu, located in the country of Samoa (formerly known as Western  
5 Samoa). Plaintiff Frances Kneubuhl Opelle (“Plaintiff”), currently eighty-five years old,  
6 filed this action against her eighty-nine-year-old brother, Douglas Crane Kneubuhl, also  
7 known as Mike Kneubuhl (“Defendant”). Plaintiff and Defendant stipulate that, as of July  
8 10, 1984, Plaintiff held a one-sixth (1/6) and Defendant held a five-sixth (5/6) interest in  
9 Fagaiofu. Plaintiff alleges that Defendant was the trustee of Plaintiff’s one-sixth (1/6)  
10 interest in the land, and alleges that Defendant sold Fagaiofu but did not provide Plaintiff  
11 with her lawful share of the profits. Plaintiff brings three claims against Defendant in  
12 connection with Fagaiofu: breach of fiduciary duty, fraudulent concealment, and financial  
13 abuse of an elder.

14 The Court issues the following findings of fact and conclusions of law pursuant to  
15 Federal Rule of Civil Procedure 52. To the extent that any findings of fact are included in  
16 the Conclusions of Law section, they shall be deemed findings of fact, and to the extent  
17 that any conclusions of law are included in the Findings of Fact section, they shall be  
18 deemed conclusions of law.

19 | II. FINDINGS OF FACT

## A. Background

21 1. Plaintiff Frances K. Opelle is eighty-five years old. Her permanent residence is  
22 located in Section 8 senior housing on the island of Oahu in Hawaii. Transcript,  
23 January 15, 2019, Volume (“Vol.”) I at 2:15.

24 2. Defendant Mike Kneubuhl is eighty-nine years old. His permanent residence is  
25 located in Laguna Niguel, California. Transcript, January 15, 2019, Vol. I at 32:25;  
26 Transcript, January 15, 2019, Vol. III continued (“cont.”). at 4:25.

27 3. Suzy Kneubuhl is the wife of Defendant Mike Kneubuhl. Transcript, January 16,

1 2019, Vol. I at 9:6–17.

2 4. Robert Opelle is the late husband of Frances Opelle. Transcript, January 15, 2019,

3 Vol. III at 3:21.

4 5. Robert John Opelle is the son of Frances Opelle and Robert Opelle. Transcript,

5 January 15, 2019, Vol. III at 2:21–24; Transcript, January 17, 2019, Vol. I cont. at

6 48:20–25.

7 6. Melissa Vollmer is the wife of Robert John Opelle. Transcript, January 17, 2019,

8 Vol. I cont. at 65:13.

9 7. Robin Kneubuhl Roush is the niece of Frances Opelle. Transcript, January 17, 2019,

10 Vol. I at 12:10–15.

11 **B. The 1982 Settlement Agreement**

12 8. Lena Pritchard Kneubuhl, Plaintiff and Defendant’s mother, established an estate and

13 a real estate trust prior to her death. Exhibit (“Ex.”) 65 at 1.

14 9. Lena Pritchard Kneubuhl’s trust and estate transferred equal 1/6 interests in fee

15 simple absolute ownership of real property in Samoa and American Samoa to her six

16 children: Douglass Crane Kneubuhl, Frances Kneubuhl Opelle, James Pritchard

17 Kneubuhl, Benjamin Franklin Kneubuhl, Jr., John Alexander Kneubuhl, and

18 Margaret Kneubuhl Landigan. Ex. 65 at 1; Transcript, January 15, 2019, Vol. III at

19 20–22. Each sibling received a 1/6 interest in Fagaiofu as a result. *Id.* Each sibling

20 also received a 1/6 interest in land known as Talimatau and Fuamete. *Id.*

21 10. In 1982, by way of a settlement agreement (“1982 Settlement Agreement”), four of

22 the siblings transferred their 1/6 interests in Fagaiofu, as well as land known as

23 Talimatau and Fuamete, to Defendant Mike Kneubuhl; Defendant thus became the

24 owner of an undivided 5/6 interest in Fagaiofu, Talimatau, and Fuamete. Ex. 65;

25 Transcript, January 15, 2019, Vol. III at 25:3–5.

26 11. Plaintiff Frances Opelle signed the 1982 Settlement Agreement, and retained her 1/6

27 undivided interest in Fagaiofu, Talimatau, and Fuamete. Transcript, January 15,

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1 2019, Vol. III at 25:3–5.

2 **C. Contested 1984 Transfer of Plaintiff’s Share of Fagaiofu**

3 12. Until July 11, 1984, Plaintiff owned a 1/6 undivided interest in Fagaiofu. Transcript,  
4 January 15, 2019, Vol. III cont. at 24:1–6; 28:5.

5 13. On July 11, 1984, a Deed of Conveyance (“the 1984 Deed”) was executed in Orange  
6 County, California, conveying Plaintiff’s 1/6 interest in Fagaiofu to Defendant. Ex.  
7 12-1, 12-2; Ex. 73, 74.

8 14. The 1984 Deed identifies Plaintiff as Donor and Defendant as Donee. *Id.*

9 15. The 1984 Deed states that Plaintiff as Donor conveys her 1/6 interest in Fagaiofu “in  
10 consideration of the natural love and affection” of Defendant as Donee. *Id.*

11 16. The 1984 Deed was executed at the law office of Richard Higbie located in Balboa  
12 Island, Orange County, California. Defendant was a client of Richard Higbie.  
13 Transcript, January 15, 2019, Vol. I at 22:17–18.

14 17. Kathryn Deborah Sutton, commonly known as Debbie Sutton, was a notary who  
15 worked for Richard Higbie in 1984. Transcript, January 16, 2019, Vol. I. cont. at  
16 3:19–25.

17 18. Several versions of the 1984 Deed exist in Samoa and California; the versions each  
18 consist of the cover jacket and the deed itself. Transcript, January 17, 2019, Vol. I at  
19 76:1–11.

20 19. One version of the 1984 Deed is a certified search copy (“Certified Search Copy  
21 Deed”) that was recorded with the Registrar’s office in Apia, Samoa (also known as  
22 Western Samoa). Ex. 12.

23 20. Another version of the 1984 Deed is a photograph of the original Deed (“Original  
24 Deed Photograph”), currently serving as an exhibit in ongoing litigation in the High  
25 Court of Samoa, Land and Titles Division. Ex. 73; Ex. 74.

26 21. The Certified Search Copy Deed states that it was signed by Frances Kneubuhl  
27 Opelle in the presence of ““Debbie Sutton,”” in quotations, with no signature by Ms.  
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1 Sutton. Ex. 12-1. The Original Deed Photograph states that it was signed by “Frances  
2 Kneubuhl Opelle in the presence of:- Debbie Sutton,” with Ms. Sutton’s name not  
3 appearing in quotations, and includes a purported signature of Debbie Sutton to the  
4 right of Ms. Sutton’s typed name. Ex. 73.

5 22. Both the Certified Search Copy Deed and the Original Deed Photograph contain a  
6 purported signature appearing as “Frances Kneubuhl Opelle.” Ex. 12-1; Ex. 73. The  
7 signature of Frances Kneubuhl Opelle appears closer to ellipses and farther to the  
8 right of the page on the Original Deed Photograph than it appears on the Certified  
9 Search Copy. Ex. 12-2; Ex. 73.

10 23. On the Certified Search Copy Deed, on the left side, perpendicular to the remainder  
11 of the writing on the deed, a type statement reads: “CERTIFIED that the foregoing  
12 Alienation is within the provisions of the Alienation of the Freehold Land Act,  
13 1972,” followed by a signature and “Solicitor for the Donee.” Ex. 12-1. On the  
14 Original Photograph Deed, on the left side of the deed, six rectangular stamps appear  
15 with a seal over each stamp; the seal over each stamp states, “DUTIES OFFICE  
16 WESTERN SAMOA.” Ex. 73.

17 24. The jacket of the Certified Search Copy deed contains a handwritten “5110” at the  
18 top of the document. Ex. 12-2. The jacket of the Original Deed Photograph does not.  
19 Ex. 74.

20 25. Typewritten at the bottom of both jacket copies are the words “Drake & Company  
21 Solicitors, Apia.” The jacket of the Certified Search Copy Deed contains a comma  
22 after “Company” and no period after “Apia.” Ex 12-2. The jacket of the Original  
23 Deed Photograph does not have a comma after “Company” and contains a period  
24 after “Apia.” Ex. 74.

25 26. The jacket of the Certified Search Copy Deed contains a stamp that reads, in part, as  
26 follows: “Samoa Land Register [...] Received for Registration 30th July 1984 At 9.20  
27 In Vol. 1 Fol. 31.” Ex. 12-2. The jacket of the Original Deed Photograph contains a  
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1 stamp that reads, in part, as follows: “Samoa Land Register [...] Copy Register No.  
2 5110c [...] Date 30th July 1984 At 9.20 In Vol. 1 Fol. 31.” Ex. 74.

3 27. As of 2019, Debbie Sutton does not recall the 1984 Deed. Transcript, January 16,  
4 2019, at 28:22–23.

5 28. When shown Ex. 11-1, a copy of the 1984 Deed appearing analogous to the Certified  
6 Search Copy Deed, Debbie Sutton stated the typed “Debbie Sutton” was typed  
7 utilizing a variety of typewriter that she would not have used during that time.  
8 Transcript, January 16, 2019, at 26: 21–25. *Id.* at 27: 1.

9 29. When shown Ex.11-2, a copy of the 1984 Deed appearing analogous to the Original  
10 Deed Photograph, Debbie Sutton stated that the signature “Debbie Sutton” appeared  
11 very close to her signature but with small differences, and that she does not believe it  
12 is her signature. Transcript, January 16, 2019, at 24:22–23; *Id.* at 25:19–21.

13 **D. Maintenance of Fagaiofu**

14 30. Plaintiff Frances Opelle has never personally visited Fagaiofu. Transcript, January  
15 15, 2019, Vol. III at 10:8–11.

16 31. Between 1984 and 2008, Mike Kneubuhl visited Fagaiofu periodically, hired a  
17 caretaker to care for the land, and attempted to prevent squatting on the land.  
18 Transcript, January 15, 2019, Vol. I at 38:5–10.

19 32. Mike Kneubuhl became a Matai, a respected position in Samoan culture, over the  
20 years in an effort to care for Fagaiofu. Transcript, January 15, 2019, Vol. III at  
21 61:18–20.

22 **E. Sale of Fagaiofu**

23 33. In 2008, Mike Kneubuhl sold the entirety of the Fagaiofu land parcel to Haleck  
24 Industries for \$2.1 million. Transcript, January 15, 2019, Vol. III at 32:13–16, 68:23–  
25 25.

26 34. The Agreement for Sale or Purchase for the sale of Fagaiofu was executed on  
27 November 17, 2008. Ex. 58-3.

1 35. Fagaiofu was transferred to Haleck Investments, Limited, on January 11, 2012. Ex.  
2 58-1.  
3 36. Mike Kneubuhl received all of the profits from the sale of Fagaiofu. Transcript,  
4 January 15, 2019, Vol. III at 32:13–16.

5 **F. Litigation in High Court of American Samoa**

6 37. In 2013, an action was filed on behalf of Frances Opelle against Mike Kneubuhl in  
7 the High Court of American Samoa (“High Court Action”), seeking judgment  
8 regarding disputed lands in American Samoa. Transcript, January 17, 2019, Vol. I at  
9 15–17.  
10 38. The litigation in the High Court regarding disputed land in American Samoa is  
11 currently ongoing. *See id; see also Frances Opelle v. Douglas “Mike” C. Kneubuhl*  
12 *et al*, High Court of American Samoa, Land and Titles Division, LT No. 20–13  
13 (2013).

14 **III. CONCLUSIONS OF LAW**

15 39. Plaintiff Frances Opelle seeks to recover damages for a 1/6 share of Defendant’s  
16 profits from the sale of Fagaiofu. Plaintiff brings three causes of action: (1) breach of  
17 fiduciary duty; (2) fraudulent concealment; (3) financial abuse of an elder. *See*  
18 Amended Complaint. Defendant Mike Kneubuhl raises several defenses to liability.  
19 The Court will address each of Plaintiff’s causes of action and Defendant’s defenses  
20 in turn.

21 **A. Breach of Fiduciary Duty**

22 40. Plaintiff Frances Opelle argues that Defendant Mike Kneubuhl breached a fiduciary  
23 duty to Frances Opelle by selling Plaintiff’s 1/6 ownership interest in Fagaiofu and  
24 failing to inform her of the sale, as well as by failing to provide her with her 1/6 share  
25 of the profits from that land sale. Mike Kneubuhl argues the breach of fiduciary duty  
26 claim fails as a matter of law because there is no evidence of a fiduciary relationship  
27 between himself and Frances Opelle. Frances Opelle argues Mike Kneubuhl was her  
28 fiduciary with respect to the management of Fagaiofu because Mike was trustee of

1 the family land as a Matai under Samoan custom. Transcript, January 15, 2019, Vol.  
2 I at 17:3–6.

3 41. Plaintiff Frances Opelle applies California law to her second and third claim for  
4 fraudulent concealment and financial abuse of an elder, yet she seeks to apply  
5 Samoan custom regarding a trust relationship to her claim for breach of fiduciary  
6 duty. *See* Transcript, January 18, 2019, Vol. I at 4. Accordingly, the Court addresses  
7 choice of law with respect to this claim.

8 42. In determining whether California or Samoan law applies, the Court must apply the  
9 conflict of law rules of California. *See Paulo v. Bepex Corp.*, 792 F.2d 894, 895 (9th  
10 Cir. 1986). California utilizes the governmental interest approach to resolve conflicts  
11 between the law of a state and a foreign country. *Id.*; *see also Hurtado v. Sup. Ct. of*  
12 *Sacramento Cty.*, 11 Cal.3d 574, 580 n.2 (1974). Under the governmental interest  
13 approach, a court must: (1) examine the substantive law at issue to determine if the  
14 laws of the two jurisdictions differ; (2) determine whether both jurisdictions have an  
15 interest in having their law applied; if not, there is no “true conflict” and the court  
16 must apply the law of the jurisdiction with an interest; and (3) if there is a true  
17 conflict, the court should apply the law of the jurisdiction whose interest would be  
18 more impaired if its law were not applied. *Nelson v. International Paint Co.*, 716  
19 F.2d 640, 644 (9th Cir. 1983).

20 43. In California, under the statute of frauds, the formation of a trust in relation to real  
21 property is not valid unless evidenced by one of the following: (a) a written  
22 instrument signed by the trustee or the trustee’s agent if authorized in writing; (b) a  
23 written instrument conveying the trust property signed by the settlor’s agent if  
24 authorized in law; or (c) operation of law. California Probate Code § 15206. By  
25 contrast, in Samoa, a Matai is “trustee of family land for benefit of entire family.”  
26 *TALO of Pago Pago v. TAVAI of Pago Pago*, High Court of American Samoa, No.  
27 14-1938 (1939). The substantive law of the two jurisdictions differs as to a trust

1 relationship, and the Court must determine whether both jurisdictions have an interest  
2 in having their laws apply.

3 44. Here, California is the only interested state. The forum is in California, the defendant  
4 is a California resident, and the alleged breach of duty took place in California when  
5 Mike Kneubuhl obtained the allegedly fraudulent 1984 Deed that is the subject of  
6 this action and all claims therein. *See Nelson*, 716 F.2d at 645–46 (finding that  
7 California is the only interested state where the forum was California and the only  
8 defendant was a California resident). As such, the Court applies California law to the  
9 claims at hand. Even if Samoa had an interest, the Court finds that California’s  
10 interest would be more impaired if its laws governing a trust relationship were not  
11 applied, as this outcome would enable any claimant to enforce oral trust relationships  
12 created outside of the state regarding in-state action, in clear contravention to  
13 California public policy. *See California Probate Code § 15206.*

14 45. To succeed on a breach of fiduciary duty claim in California, a plaintiff must  
15 establish the existence of a fiduciary relationship, breach of that duty, and damages.  
16 *Charnay v. Cobert*, 145 Cal. App. 4th 170, 182 (2006). The existence of a fiduciary  
17 relationship, giving rise to a fiduciary duty, is a question of law. *Marzec v. Public*  
18 *Employees Retirement System*, 236 Cal. App. 4th 889, 915 (2015).

19 46. Frances Opelle contends that Mike Kneubuhl owed her a fiduciary duty because he  
20 was her trustee regarding Fagaiofu. However, Plaintiff has not claimed or produced  
21 any writing evidencing the creation of a trust relationship between Frances Opelle  
22 and Mike Kneubuhl. As such, Frances Opelle has not shown a fiduciary relationship,  
23 and there is no associated breach of fiduciary duty.

24 **B. Fraudulent Concealment**

25 47. Frances Opelle seeks to recover from Mike Kneubuhl under a theory of fraudulent  
26 concealment. “The required elements for fraudulent concealment are: (1)  
27 concealment or suppression of a material fact; (2) by a defendant with a duty to

1 disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by  
2 intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the  
3 fact and would not have acted as he or she did if he or she had known of the  
4 concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the  
5 concealment or suppression of the fact.” *Hambrick v. Healthcare Partners Medical*  
6 *Group, Inc.*, 238 Cal. App. 4th 124, 162 (2015) (quoting *Graham v. Bank of America*,  
7 N.A., 226 Cal. App. 4th 594, 606 (2014)). Nondisclosure when a party has a duty to  
8 disclose is sufficient to constitute concealment, and whether a disclosure is adequate  
9 “to defeat a claim of concealment depends on the scope of the duty to disclose.”  
10 *Lovejoy v. AT&T Corp.*, 119 Cal. App. 4th 151, 158 (2004).

11 48. Frances Opelle argues Mike Kneubuhl engaged in fraudulent concealment on two  
12 bases: (1) that he forged the 1984 Deed and thus fraudulently concealed the wrongful  
13 conveyance of Opelle’s 1/6 interest in Fagaiofu; and (2) that he fraudulent concealed  
14 his sale of Fagaiofu from Opelle. Transcript, January 18, 2019, at 7:11–15.

15 **1. 1984 Deed**

16 49. Regarding the first basis, the conveyance of Opelle’s interest in Fagaiofu, the original  
17 1984 Deed is currently an exhibit in the ongoing High Court Action. Transcript,  
18 January 17, 2019, Vol. I cont. at 82: 6–7. Without the original document before the  
19 Court, the Court does not find that the Certified Search Copy Deed or the Original  
20 Deed Photograph are fraudulent. The Court would order the production of the  
21 original 1984 Deed, currently held in the High Court of American Samoa, so as to  
22 make a further determination regarding authenticity, were the Ninth Circuit to give  
23 instruction to that effect.

24 50. Accordingly, the Court does not find Mike Kneubuhl concealed a material fact  
25 regarding the 1984 Deed, and Frances Opelle cannot meet the elements of fraudulent  
26 concealment regarding the 1984 Deed.

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## 2. Sale of Fagaiofu

2 51. Regarding the second basis, the sale of Fagaiofu, Frances Opelle has the burden to  
3 establish that Mike Kneubuhl had a duty to disclose the sale, and that he failed to  
4 disclose it. *Lovejoy*, 119 Cal. App. 4th at 158. “Absent a fiduciary relationship, a duty  
5 to disclose only arises where ‘(1) the defendant makes representations but does not  
6 disclose facts which materially qualify the facts disclosed, or which render his  
7 disclosure likely to mislead; (2) the facts are known or accessible only to defendant,  
8 and defendant knows they are not known to or reasonably discoverable by the  
9 plaintiff; [or] (3) the defendant actively conceals discovery from the plaintiff.’”  
10 *Naidong Chen v. Fleetcor Technologies, Inc.*, 2017 WL 1092342 at \*17 n.6 (March  
11 23, 2017) (quoting *Warner Constr. Corp. v. City of Los Angeles*, 2 Cal. 3d 285, 294  
12 (Cal. 1970)).

13 52. As the Court finds no fiduciary relationship between Plaintiff Opelle and Defendant  
14 Kneubuhl, Plaintiff must show that Mike Kneubuhl made misleading representations,  
15 that only Kneubuhl knew of the sale and it was not reasonably discoverable by  
16 Opelle, or that Kneubuhl actively concealed the sale from Opelle.

17 53. Neither Plaintiff nor Defendant contend that Defendant made misleading  
18 representations regarding the sale of Fagaiofu.

19 54. Opelle cannot show that only Kneubuhl knew of the sale of Fagaiofu and that the sale  
20 was not reasonably discoverable; the sale was public and as such, was reasonably  
21 discoverable. *See. Ex. 58.*

22 55. Frances Opelle contends that Kneubuhl intentionally concealed the sale of Fagaiofu  
23 to Haleck Industries from her. However, Opelle has not presented evidence  
24 demonstrating that Kneubuhl actively concealed the sale, particularly in light of the  
25 public nature of the sale.

26 56. Accordingly, Frances Opelle did not show that Mike Kneubuhl had a duty to  
27 disclose, *see Fleetcor Technologies*, 2017 WL 1092342 at \*17 n.6, and Opelle thus

1 cannot succeed on her fraudulent concealment claim.

2 57. Even if the Court were to find that Mike Kneubuhl owed a duty to disclose to Frances

3 Opelle, the statute of limitations bars Opelle's fraudulent concealment claim. In

4 California, an action grounded in constructive or actual fraud may be commenced

5 within three years after discovery of the fraud. Cal. Civ. Proc. Code § 338. Plaintiff's

6 Amended Complaint in the High Court Action states "Plaintiff learned about the

7 'Fagaiofu' land transaction from other family members in 2012." Defendant's

8 Request for Judicial Notice (Dkt. 114), Ex. E-011, at 86.

9 58. Plaintiff contends that the Amended Complaint in the High Court Action has since

10 been stricken by the High Court of American Samoa, and accordingly, this Court

11 may not take judicial notice of that complaint. However, while not a conclusive

12 judicial admission, a pleading that is later stricken is still admissible evidence.

13 "When a pleading is amended or withdrawn, the superseded portion ceases to be a

14 conclusive judicial admission, but it still remains as a statement once seriously made

15 by an authorized agent, and as such it is competent evidence of the facts stated,

16 though controvertible, like any other extrajudicial admission made by a party or his

17 agent." *Huey v. Honeywell, Inc.*, 82 F.3d 327, 333 (9th Cir. 1996) (quoting *Kunglig*

18 *Jarnvagsstyrelsen v. Dexter & Carpenter, Inc.*, 32 F.2d 195, 198 (2d Cir.), cert.

19 denied, 280 U.S. 579 (1929)).

20 59. A statement is not hearsay if it is offered against an opposing party and was made by

21 the party or by a person whom the party authorized to make a statement on the

22 subject. Federal Rule of Evidence 801(d)(2). While Opelle's statement in the High

23 Court Action Amended Complaint is not a conclusive judicial admission, it is

24 admissible by Defendant as a statement of a party opponent.

25 60. Opelle's statement in the Amended Complaint provides evidence that Opelle knew of

26 the Fagaiofu sale as of sometime during 2012. As such, the limitations period for her

27 fraudulent concealment claim ran three years later, in 2015. Cal. Civ. Proc. Code §

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1 338. Opelle's fraudulent concealment claim is thus barred by the applicable statute of  
2 limitations.

3 **C. Financial Abuse of An Elder**

4 61. Frances Opelle also brings a claim for financial abuse of an elder. Under California  
5 Welfare and Institutions Code § 15610.30, a plaintiff claiming financial abuse of an  
6 elder must show that a defendant took, secreted, appropriated, obtained, or retained  
7 real or personal property of an elder (or assisted in any of the aforementioned  
8 actions) for wrongful use or intent to defraud, or both. Cal. Welfare and Institutions  
9 Code § 15610.30.

10 62. For purposes of a financial abuse of an elder claim, “elder” is defined as any person  
11 residing in the state who is 65 years of age or older. Cal. Welf. & Inst. Code §  
12 15610.27.

13 63. Frances Opelle argues she should succeed on her claim because Mike Kneubuhl  
14 concealed the transfer of her 1/6 ownership interest in Fagaiofu, constituting financial  
15 abuse. However, by Plaintiff Opelle’s own admission, this transfer of her ownership  
16 interest in Fagaiofu—which forms the basis of her financial abuse claim—occurred  
17 in 1984. Transcript, January 15, 2019, Vol. III at 11:16–17; *see also* Ex. 12-1, 12-2,  
18 73, 74.

19 64. Frances Opelle is currently eighty-five years old; in 1984, she was significantly  
20 younger than sixty-five years old. Transcript, January 15, 2019, at 2:15. As such,  
21 Frances Opelle was younger than sixty-five years old when her ownership interest in  
22 Fagaiofu was transferred to Mike Kneubuhl, and Opelle cannot succeed on a claim  
23 for financial abuse of an elder.

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## IV. CONCLUSION

2 For the reasons explained above, the Court HOLDS that Mike Kneubuhl is not  
3 liable for breach of fiduciary duty, fraudulent concealment, or financial abuse of an elder.  
4 Defendant shall submit a proposed judgment **on or before February 15, 2019.**

David O. Carter

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DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE

Dated: February 1, 2019